

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

IN RE APPLICATION OF: Jaap BAKKER et al.
SERIAL NO.: 10/561,759
FILED: July 28, 2006
TITLE: GUIDE, ASSEMBLED GUIDE AND DEVICE FOR
CONDITIONING PRODUCTS DISPLACEABLE
ALONG A GUIDE TRACK
Group/A.U.: 3651
Examiner: Kavel Singh
Conf. No.: 1638
Docket No.: P06937US0

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPEAL BRIEF

Dear Sir:

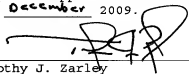
This is an appeal from the final rejection of claims 1-7,
9-13 and 15-21 dated July 15, 2009.

I. Real Party In Interest:

The real party in interest of the instant appeal is Stork
Townsend B.V., having an address of Industrielaan 63, Oss,
Netherlands 5349 AE.

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Timothy J. Zarley

II. Related Appeals and Interferences:

On January 9, 2008 an Appeal Brief was filed in response to a Final Office Action dated September 14, 2007. In response to the Appeal Brief a non-final action dated April 3, 2008 was issued.

On June 30, 2008 an Appeal Brief was filed in response to the non-final action dated April 3, 2008. In response to the Appeal Brief a non-final action dated October 17, 2008 was issued.

On January 20, 2009 Appellant filed an Amendment in response to the non-final action dated October 17, 2008. In response to the Amendment a Final Office Action dated July 15, 2009 was issued. The present Appeal Brief is in response to Final Office Action dated July 15, 2009.

III. Status of the Claims:

Presently, claims 1-21 are pending in this application and appear as Appendix A of this Brief. Claims 8 and 14 are objected to as being dependent on a rejected base claim but would be allowable if rewritten in independent form. Claims 1-7, 9-13 and 15-21 are identified as the appealed claims.

IV. Status of Amendments:

No amendments have been made since the final rejection of July 15, 2009.

V. Summary of Claimed Subject Matter:

Claims 1-21 relate to a guide for supporting a displaceable object having a plastic guide profile 30, over which displaceable objects can slide either directly or via a

product carrier, and a support structure 32 supporting the guide profile 30, characterized in that the guide profile 30 is engaged at least at two spaced-apart positions by the support structure 32, at least one engaging position of which consists of a free support of guide profile 30 on support structure 32 such that the freely supporting side of guide profile 30 is displaceable relative to the support structure 32. See Page 1, lines 28-30; Page 6, lines 2-6; Fig. 5.

Claim 2 adds the limitation that the guide profile 30 is coupled rigidly on one side to support structure 32. *Id.*; see also Page 2, lines 3-6. Claim 3 adds the limitation that the guide profile 30 is provided with a three-dimensional contact surface 33 at the position where it supports freely on support structure 32. *Id.*; see also Page 2, lines 12-15. Claim 4 adds the limitation that support structure 32 is provided with a three-dimensional contact surface 34 at the position where guide profile 30 supports freely thereon. *Id.*

Claim 5 adds the limitation that the free support of guide profile 30 on support structure 32 is formed by a recess 33 in guide profile 30 in which an engaging part 34 of support structure 32 engages close-fittingly and displaceably. *Id.*; see also Page 2, lines 19-21. Claim 6 further limits claim 5, requiring that a free space is enclosed between engaging part 34 of support structure 32 and a part of the recess 33 on the side remote from the engaging part 34, in which recess 33 the engaging part 34 is axially displaceable. *Id.*; see also Page 2, lines 21-24. Claim 7 further limits claim 6, requiring that recess 33 with the engaging part 34 displaceable therein is formed such that the direction of displacement of engaging part 34 relative to recess 33 is at least substantially

parallel to the guide surface. *Id.*; see also Page 2, line 32 - Page 3, line 1.

Claim 9 adds the limitation to claim 1 that guide profile 30 is manufactured from a high-molecular weight polyethylene, while claim 10 requires guide profile 30 to be metal. *Id.*; see also Page 3, lines 11-15. Claim 11 adds to claim 5 the addition limitation that engaging part 34 of support structure 32 and recess 33 in guide profile 30 are at least substantially cylindrical. *Id.*; see also Page 3, lines 17-18.

Claim 12 adds the limitation that guide profile 30 is provided on opposite sides with engaging positions. *Id.*, see also Page 3, lines 22-23. Claim 13 adds the limitation that a plurality of guide profiles 30 are mutually connected with a gap to each other. *Id.*; see also Page 3, lines 25-27. Claim 15 further limits claim 13, requiring that the guide profiles 30 are engaged by a single support structure 32, while claim 16 limits claim 13 by requiring that guide profiles form a helical guide track 22. *Id.*; see also Page 3, line 32 - Page 4, line 2; Fig. 4.

Claim 17 depends from claim 13, and further requires a displacing means for displacing products along the plurality of guide profiles 30, a housing 23 at least partially enclosing the plurality of guide profiles 30 and the displacing means, and conditioning means for regulating the atmosphere in housing 23. *Id.*; see also Page 4, lines 7-11; Fig. 4.

Claim 18 adds to claim 17 the limitation that the conditioning means comprise temperature-regulating means. *Id.*; see also Page 4, lines 11-12. Claim 19 adds to claim 17 the limitation that the assembled plurality of guide profiles 30 comprises a vertically oriented, helical conveyor track 22

with a housing 23 placed therearound. *Id.*; see also Page 4, lines 12-14. Claim 20 depends from claim 19, and further requires that a rotatable core be placed in the helical conveyor track 22. *Id.*; see also Page 4, lines 14-15. Claim 21 adds to claim 17 the limitation that the displacing means comprise a driven endless conveyor track. *Id.*; see also Page 4, lines 15-18.

VI. Grounds of Rejection to be Reviewed on Appeal

The Examiner has rejected claims 1-5, 9-13, 15-17 and 19-21 under 35 USC § 103(a) as being unpatentable over US Pat No 4,637,529 to Tarlton et al. Additionally, the Examiner has rejected claim 18 as being unpatentable under 35 USC § 103(a) over Tarlton et al. in view of US Pat No 1,651,912 to Thompson. For purposes of this Brief, the § 103 rejections have been grouped and are being collectively addressed.

VII. Argument

1. Rejection of Claims 1-5, 9-13, 15-17 and 19-21 under 35 USC § 103(A)

Claims 1-5, 9-13, 15-17 and 19-21 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Tarlton. Applicant asserts that the rejection to claim 1 is improper because each and every limitation of claim 1 is not taught or rendered obvious by the Tarlton reference. The teachings or suggestions to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in Applicant's disclosure. See In re Vaeck, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991); MPEP § 2143. To establish a *prima facie* case of obviousness, all the claim limitations must be taught by the prior art. In re Royka, 490

F.2d 981, 180 U.S.P.Q. 580 (CCPA 1974). "All words in a claim must be considered in judging the patentability of that claim against the prior art." In re Wilson, 57 C.C.P.A. 1029, 1032 (1970).

Claim 1 requires, *inter alia*, "a plastic guide profile having a guide surface over which displaceable objects can slide directly or via a product carrier" (emphasis added). US Pat No 4,627,529 to Tarlton et al. does not teach this limitation. Tarlton et al. instead teaches an "outer guide 42 which extends about the spiral conveying path." '529 at Col. 3, lines 37-38. In Figs. 1, 2, 3 and 4 object 42 is indicated as the external upright wall that prevents transported goods to fall sideways off of the conveyor chain 24. Object 42 is thus not an item "over which displaceable objects can slide."

Specifically, in the present invention the claim limitation "plastic guide profile having a surface over which displaceable objects can slide directly or via a product carrier" is most closely compared with tracks 28, 30 ("the conveyor path is supported and defined by a chain track which comprises a pair of transversely or laterally spaced upper tracks 28, 30 and lower tracks 28A, 30A supported on a bracket 32." (Tarlton, Col. 3, lines 24-28)). From these tracks 28, 30 is also disclosed that they are "preferably made of ultra high molecular weight polyethelene." (Tarlton, Col. 3, lines 51-52).

In the view of the Applicant there is no disclosure in Tarlton that "the guide profile (thus, the tracks 28, 30) is engaged at least at two spaced apart positions by the support structure, at least one engaging position of which consists of a free support of the guide profile on the support structure such that the freely supporting side of the guide profile is

displaceable relative to the support structure." The figures 2-5, 8 and 9 of Tarlton all point in another direction; the tracks 28, 30 are not indicated to be engaged on "two spaced apart positions" let alone that "one support side is displaceable relative to the support structure." As a result, Tarlton does not teach this limitation and Applicant asserts the obvious rejection is overcome.

Claim 1 also in part requires "a plastic guide profile having a guide surface over which displaceable objects can slide directly or via product carrier." Tarlton is silent as to what the material is being used for the support rod 42 and specifically whether the support rod is made of plastic or not. The office action asserts that while Tarlton is silent regarding the material of guide profile 42 the selection of a known material based on its suitability for intended use is a design consideration well within the state of the art. Applicant cannot agree. In this instance, having a plastic guide profile is not a mere design choice. According to the summary of the invention "It is found in practice that a sufficient strength of the plastic guide profile can be obtained at limited cost when the guide profile is manufactured from high molecular polyethelene." (Page 3, lines 11-14). Thus, a cost advantage is presented and the choice to make the device plastic is not merely a design choice. Consequently, Applicant asserts this limitation is overcome.

Claim 1 also requires in part "characterized in that the guide profile is engaged at least at two spaced apart positions by the support structure." The office action does not present a guide profile that is engaged at least at two spaced apart positions by a support structure and thus a *prima facie* case of obviousness is not presented. Instead, the

office action considers support rod 42 as the guide profile and bracket 32 as the support structure. (Final Office Action, page 3). As shown in Fig. 5 the rod 42 is not engaged at two spaced apart positions by the brackets 32 and instead the support rod 42 extends through member 34. Thus, the item identified as the guide profile is not engaged in two spaced apart positions by the item identified as a support structure and thus a *prima facie* case of obviousness has not been presented. Thus, Appellant respectfully requests reversal regarding the rejection.

Claim 1 requires in part "at least one engaging position of which consists of a free support of the guide profile on the support structure such that the freely supporting side of the guide profile is displaceable relative to the support structure." This structure is not taught by the Tarlton reference. The final office action asserts that bracket 32 is the support structure. (Final Office Action, page 3). Bracket 32 is a unitary member comprising a central tubular member 34 secured at opposite ends to opposed U-shaped flange members 36, 38 with the flanges facing each other so as to provide support for a conveyor. (Col. 3, lines 24-33). A support rod 42 extends through member 34 and is secured at one end to core 10. (Col. 3, lines 28-38). Thus, the bracket 32 does not support the rod 42, or present a freely supporting side of a guide profile that is displaceable to the bracket. Thus, again this limitation is not met and Appellant respectfully requests the rejection be withdrawn. Additionally claims 2-5, 9-13, 15-17 and 19-21 depend on claim 1 and for at least this reason are considered in allowable form.

In response to these arguments the Examiner argues that "Tarlton teaches a guide profile 42 which provides an outer

restraint for guiding the conveyed products. The system is conveying products through sliding or whatever means. In addition the language of object can slide does not provide an additional structure to the limitations." (July 15, 2009 Office Action, Page 2). The Appellant cannot agree. The Examiner is merely offering unsupported Examiner argument and has not pointed to where Tarlton the specification or drawings of Tarlton teach "a plastic guide profile having a guide surface over which displaceable objects can slide directly or via a product carrier" as is required by claim 1. See In re Royka, 490 F.2d 981, 180 U.S.P.Q. 580 (CCPA 1974) (To establish a *prima facie* case of obviousness, all the claim limitations must be taught by the prior art).

The Examiner also argues that "Tarlton discloses that the tracks are made of polyethelene (C3 L51-53)". (July 15, 2009 Office Action, Page 2). Although Tarlton may disclose that tracks 28, 30, 28A and 30A are made of ultra high molecular weight polyethelene, (See C3 L24-27; L51-54), Appellant's claim 1 requires "a plastic guide profile." The Examiner has identified Tarlton's element 42 (referred to as a "support rod" or "guide" therein) as reading-on Applicant's "plastic guide profile." Tarlton does not teach this element 42 being made of plastic. As such, the Examiner's rejection cannot stand as Tarlton fails to teach a plastic guide carrier.

With respect to the Examiner's final argument Appellant continues to disagree and reasserts all previous arguments above. Thus, a *prima facie* case of obviousness has not been made in this application and Appellant respectfully requests reversal of all rejections.

2. Rejection of Claim 18 under 35 USC § 103(a):

Claim 18 depends from claim 1 that Appellant believes is allowable subject matter. Appellant requests that this rejection be reversed. Thus, a prima facie case of obviousness has not been made in this application and Appellant respectfully requests reversal of all rejections.

Payment is included herewith. No other fees or extensions of time are believed to be due in connection with this response; however, consider this a request for any fee or extension inadvertently omitted, and charge any additional fees to Deposit Account 50-2098.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'TJZ', with a horizontal line extending to the left.

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- TJZ/CAP/jlk/kam -
Attachments: Appendices

VIII. Claims Appendix

1. Guide for supporting a displaceable object, comprising:
 - a plastic guide profile having a guide surface over which displaceable objects can slide directly or via a product carrier, and
 - a support structure supporting the guide profile,characterized in that the guide profile is engaged at least at two spaced-apart positions by the support structure, at least one engaging position of which consists of a free support of the guide profile on the support structure such that the freely supporting side of the guide profile is displaceable relative to the support structure.
2. Guide as claimed in claim 1, characterized in that the guide profile is coupled rigidly on one side to the support structure.
3. Guide as claimed in claim 1, characterized in that the guide profile is provided with a three-dimensional contact surface at the position where it supports freely on the support structure.
4. Guide as claimed in claim 1, characterized in that the support structure is provided with a three-dimensional contact surface at the position where the guide profile supports freely thereon.

5. Guide as claimed in claim 1, characterized in that the free support of the guide profile on the support structure is formed by a recess in the guide profile in which an engaging part of the support structure engages close-fittingly and displaceably.

6. Guide as claimed in claim 5, characterized in that a free space is enclosed between the engaging part of the support structure and a part of the recess on the side remote from the engaging part, in which recess the engaging part is axially displaceable.

7. Guide as claimed in claim 6, characterized in that the recess with the engaging part displaceable therein is formed such that the direction of displacement of the engaging part relative to the recess is at least substantially parallel to the guide surface.

8. Guide as claimed in claim 5, characterized in that the tight fit of the engaging part of the support structure in the recess in the guide profile leaves free a slotted space between the engaging part and the inside of the recess of a maximum of 3 mm, preferably less than 1 mm.

9. Guide as claimed in claim 1, characterized in that the guide profile is manufactured from a high-molecular polyethylene.

10. Guide as claimed in claim 1, characterized in that the support structure is manufactured from metal.

11. Guide as claimed in claim 5, characterized in that the engaging part of the support structure and the recess cooperating therewith in the guide profile are at least substantially cylindrical.

12. Guide as claimed in claim 1, characterized in that the guide profile is provided on opposite sides with engaging positions.

13. Assembled guide provided with a plurality of mutually connecting guides as claimed in claim 1, wherein a plurality of guide profiles are placed connecting with a gap to each other.

14. Assembled guide as claimed in claim 13, characterized in that the gap between the profiles is between 5 and 35 mm at atmospheric temperature.

15. Assembled guide as claimed in claim 13, characterized in that the plurality of profile parts are engaged by a single support structure.

16. Assembled guide as claimed in claim 13, characterized in that the plurality of profiles forms a helical guide track.

17. Device for conditioning products displaceable along a guide track, comprising:

- an assembled guide as claimed in claim 13,
- displacing means for displacing the products for conditioning along the guide,
- a housing at least partially enclosing the assembled guide and the displacing means, and

- conditioning means for regulating the atmosphere in the housing.

18. Device as claimed in claim 17, characterized in that the conditioning means comprise temperature-regulating means.

19. Device as claimed in claim 17, characterized in that the assembled guide comprises a vertically oriented, helical conveyor track with a housing placed therearound.

20. Device as claimed in claim 19, characterized in that a rotatable core is placed in the helical conveyor track.

21. Device as claimed in claim 17, characterized in that the displacing means comprise a driven endless conveyor track.

IX. Evidence Appendix

None

X. Related Proceedings Appendix

None